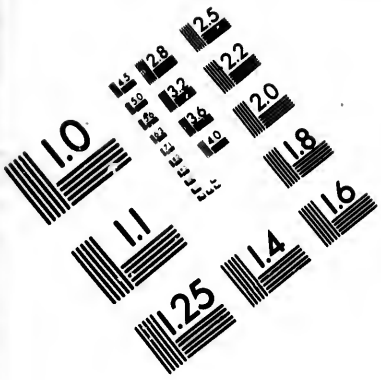

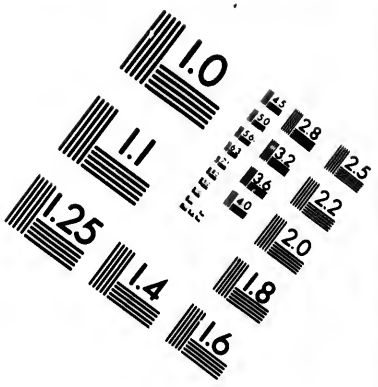

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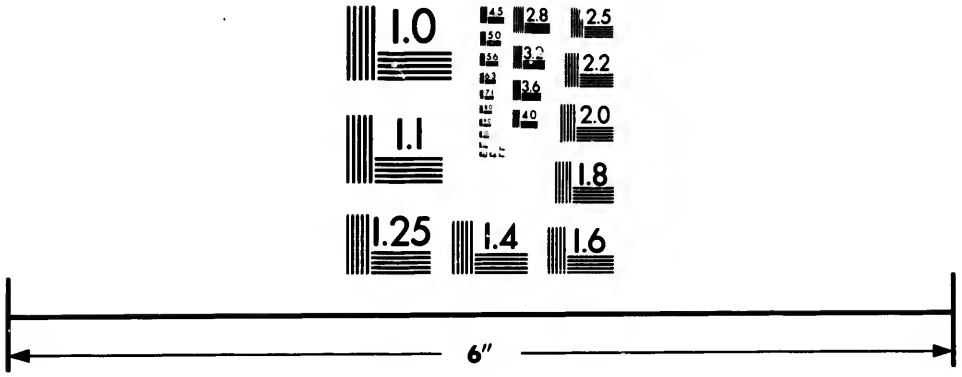

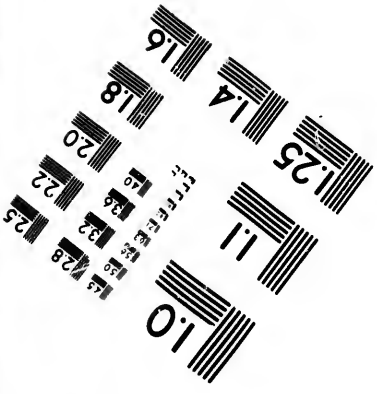

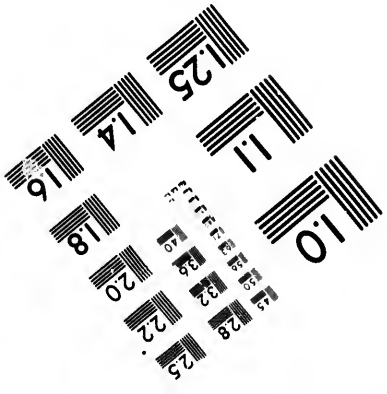

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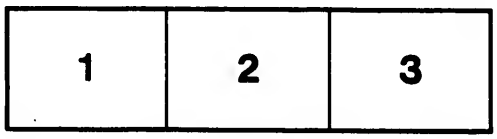

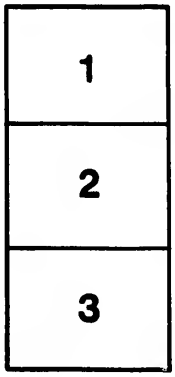

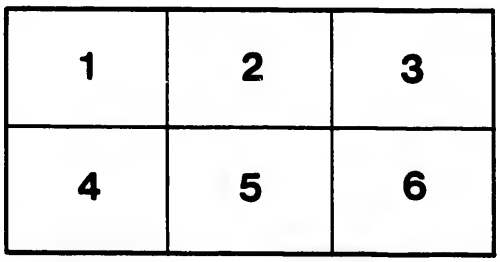

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IN THE QUEEN'S BENCH.

APPEAL SIDE.

W. M. BARROW,

Appellant.

AND

The Mayor et al

AND

Eugène H. Pelletier, et mar.

RESPONDENTS.

[redacted] list of books.

Nov 1868

"Chronicle" Steam Print, Quebec.

IN THE QUEEN'S BENCH.

APPEAL SIDE.

W. M. BARROW,

Appellant.

PROVINCE OF CANADA.
LOWER CANADA.

IN THE QUEEN'S BENCH.

John William Barrow,

Plaintiff in the Superior Court.

APPELLANT.

AND

The Mayor, Councillors and Citizens of the City of Quebec,

Defendants in the Court below,

AND

Emilie Marie Poulin & Louis Larose, her husband,

Intervening parties in the Court below,

RESPONDENTS.

THE present appeal arises from a judgment rendered in an action in which the Appellant by his declaration alleged as follows:—"That at the City of Quebec, on the sixth day of November last past, the said Plaintiff was possessed "as proprietor of a certain brown gelding horse of the value of £50, and of a certain four-wheeled carriage, "called a waggon, of the value of £30, and of a certain set of harness upon the said horse, of the value of £8. "That about six o'clock on the evening of that day the said horse, attached by the said harness to the said "carriage, was quietly driven by a fit person to guide the same, to wit, the Plaintiff, and at the ordinary and "reasonable rate at which horses in harness are usually driven, over and along a certain street in the said City "of Quebec called St. John's Street, to wit, on a part thereof outside one of the said City Gates called St. "John's Gate; that the said horse and carriage being so quietly driven, arrived at a certain part of the said street, "opposite a certain house, in the course of erection upon the property of one Marois, on the north side of the "said street, at which place, opposite the said house then being built, the said street was occupied and "encumbered with building materials and rubbish, deposited thereon to the extent of two-thirds of the width "of the said street; that the said part of the street so occupied by the said building materials and rubbish was "not in any manner enclosed to prevent accidents to passengers upon the said street, which, long before then "had been, and was at the time, a public thoroughfare of the said city, over which passengers, horses, and "carriages were constantly passing; that the said horse and carriage, so carefully driven, at the said place so "encumbered, was met by a certain other horse and carriage driven in like manner by some person to the "said Plaintiff unknown, at which place, the evening being dark, in consequence of the said building materials "and rubbish occupying the said street, the said Plaintiff's horse and carriage and the said horse and carriage of "the said person to the said Plaintiff unknown, for want of sufficient space to pass one another became entangled "together, which caused the said Plaintiff's horse to take fright, run away, and become unmanageable, whereby "the said carriage in which the said Plaintiff then was, to which the said horse was harnessed, was broken to "pieces, the said Plaintiff and his sister being in the said carriage, were violently thrown out and bruised and "wounded, and the said horse dashing himself against another vehicle in the said street broke two of his "legs, rendering himself useless and necessitating his destruction, whereby the said horse, carriage, and harness "were lost to the said Plaintiff, and he, the said Plaintiff, in consequence of his said bruises and wounds became "injured and sick, and unable to attend to his ordinary business, and has been put to great trouble and expense "in procuring medical attendance rendered necessary by the injuries by him received, and in consequence of "bruises and wounds so sustained. And the said Plaintiff further saith that it was solely by the fault and "negligence of the said Defendants in not causing the said street to be kept open and free from impediments to "passengers, so that they might pass and repass over the same by day and night that the said accident occurred "and that the property of the said Plaintiff was thus destroyed, and himself bruised and wounded; and that the "said Defendants, contrary to their duty, suffered and knowingly permitted the said street to be occupied by the "said materials and rubbish exceeding two-thirds of the width of the said street, and did not cause to be enclosed "the said part of the street so occupied by the same, with a fence as required by law; nor did they cause a "light to be kept near the same in order that passengers might be enabled to see the said impediment in the said "street and avoid the danger caused thereby, but wholly neglected their duty in these respects, contrary to the "ordinances and statutes which regulate the administering, making, and keeping in repair of the said streets and "thoroughfares of the said city under the control of the said Defendants, by virtue whereof the said Defendants "were, at the time of the said accident, and long before then, bound to keep the said street in fit and proper "condition for the use of passengers, horses, and carriages, and that by reason of the said fault and negligence "of the said Defendants the said Plaintiff hath, ever since the said accident, been deprived, not only of his said "horse, harness, and carriage, but hath, as aforesaid, suffered in his body, and been otherwise greatly injured to "his damage of £500." The conclusions of this declaration were for a condemnation for £500, interest, and costs. On the return of this action in the Court below the Defendants appeared by Attorney, as did also the other Respondents to the present Appeal who intervened therein, and by their petition in intervention among other things set forth as follows:—"Que les dits intervenants sont les entrepreneurs qui ont contracté pour la

" construction de la maçonnerie d'une maison au côté nord de la rue St. Jean, dans le faubourg St. Jean de " Québec, et que comme tels ils ont placé les matériaux dans cette partie de la rue St. Jean, en la Demanderesse " en cette cause se plaint qu'il a souffert des dommages resultant d'un accident causé par les dits matériaux. " Qu'en conséquence les Intervenants se trouvent garants des Défendeurs en cette cause, et ils demandent à " intervenir pour défendre à la presente action. Que la Demanderesse n'a pas de fait souffert les dommages qu'il " reclament par la faute et negligence des Intervenants, et que les *materiaux qui se trouvaient dans la rue* " *mentionnée y étaient suivant les réglements de la Corporation de Québec alors en force, et suivant la loi. Que* " *les dits dommages et le dit accident ne sont dues qu'à l'imprévoyance et à la faute du Demandeur.*"

The Defendants having taken communication of this Intervention filed in the Court below the following written consent:—" Vu l'intervention de la dite Emilie Marie Poulin, et de son dit époux, Louis Larose, garants " simples des dits Défendeurs, et vu que les dits garants ont par leur dite intervention liée en cette cause pris " le fait et cause des dits Défendeurs, eux les dits Défendeurs, pour éviter un circuit d'actions, et aussi de plus " grand frais, consentent par le present que le jugement qui interviendra en cette cause, soit pour ou contre les " Intervenants, soit le même pour ou contre les dits Défendeurs."

After the placing of this document upon the record, the said intervening parties pleaded to the Appellant's action, by a defense au fonds en fait, denying all the allegations of his declaration, and by a perpetual peremptory exception, in which they stated as follows:—" Que les Intervenants " sont les entrepreneurs pour la construction d'une maison située dans le faubourg St. Jean de la " Cité de Québec, au côté nord de la rue St. Jean, laquelle maison appartient à M. Marois, que la " construction de cette maison, le déblaiment de la place, le deplacement des materiaux de la vielle maison, le " transport de nouveaux materiaux sur la place pour une maison en pierres de taille à quatre étages, ont commencé " le premier juin dernier, et que la dite maison n'est pas encore terminée. Que d'après la loi, les Intervenants " avaient le droit d'occuper une partie de la rue St. Jean, vis-à-vis la propriété en question, pour déposer les " materiaux necessaires à la dite construction, laissant néanmoins un passage suffisant pour le public dans la dite " rue, vis-à-vis la propriété en question. Qu'en vertu de la loi, avec l'assentiment et la permission de la Corpo- " ration de Québec, les Défendeurs en cette cause, les Intervenants ont occupé et occupaient une partie de la " dite rue vis-à-vis la dite propriété, avec les materiaux de constructions de la dite maison, de manière à laisser " un passage libre et suffisant au public dans la dite rue, à l'époque que l'accident dont se plaint le Demandeur " est arrivée. Que les Intervenants ne sont pas la cause de l'accident en question, et qu'il existait alors un " passage suffisant dans la dite rue, à l'endroit en question, pour y passer piétons et voitures, sans aucun danger. " Que le Demandeur n'a pas pris les précautions nécessaires, et que c'est par sa faute et négligence que le dit " accident est arrivé, qu'il conduisant un cheval fougueux, et qu'il eût pu éviter l'accident avec les soins ordinaires." By the statement of facts fyled in the Court below, after issue joined the Appellant particularly undertook to prove. That in consequence of the incumbrance of the street by the materials placed upon it, as well as by their not being enclosed, and there being no light upon them, an accident occurred, whereby two of the legs of the Appellant's horse came to be broken, his carriage and harness destroyed, and he himself severely bruised and injured, and that this accident occurred solely by the fault and negligence of the Respondent, in permitting the street to be so incumbered with materials encaclosed, and not lighted, contrary to their duty, while the intervening parties on the contrary alleged: That with the consent of the Defendants, and according to law, they occupied such portion only of the street as to leave a sufficient passage for the public. That the Appellant did not take necessary precaution, and that it was by his own fault and negligence the mischief was done him, because he was at the time conducting a fiery and unruly horse, "*cheval fougueux*," and might have avoided the disaster by ordinary care. Evidence having been adduced by the Plaintiff and Intervening parties, it was consented to by the Defendants, that the said evidence should be considered as taken against them exparté. After this, the cause being argued on the merits, the final judgment rendered in the Court below was in these terms:—" The Court " considering that the plaintiff hath failed to establish in evidence the material allegations of his declaration, more " particularly that it was by the fault and negligence of the Defendants, that the property of the Plaintiff was " destroyed in the manner by him complained of, and considering on the contrary that it is fully proved in evidence " that the injury to the property and person of the Plaintiff, which forms the subject matter of this suit, was " caused by the running away of his horse, occasioned, as far as the evidence accounts for the same, by the " Plaintiff's vehicle coming into collision with another carriage then passing in the street, doth dismiss the " Plaintiff's action with costs, and on motion to that effect *distraction de frais* is awarded to U. Tessier, Esquire, " the Attorney of the said Defendants."

This judgment of which the Appellant now complains he believes to be erroneous as to the fact on which it purports to be based, and as to the law; and also to be contradictory in its motives and reasons, contradictory inasmuch as it states that the Appellant has failed to establish in evidence the material allegations of his declaration, because it was fully proved that the injury which gave rise to the damage suffered by him was caused by the running away of his horse, occasioned by his coming in collision with another carriage then passing in the street, while this is in reality one of the material allegations of the Appellant's declaration and is also precisely the fact which the judgment asserts was fully proved, though, at the same time it also declares the material allegations of this declaration not to have been proven; again erroneous in fact and in law, because it declares that it was not established that the accident that happened to the Appellant was occasioned by the fault and negligence of the Respondents, which the Appellant submits was an incorrect conclusion arrived at as to the fact for want of a right appreciation of the law respecting evidence, and the legitimate presumption to be drawn from it whereby facts come to be sufficiently established.

It appears to the Appellants, the main enquiry in the cause is this; is the evidence which has been adduced sufficient in law to entitle him to have the casualty by which he suffered imputed to the acts and defaults of the Respondents? and this enquiry necessarily leads to the consideration of what amount of testimony the law exacts of the Appellant to establish that the mischief done him was caused by the fault of the Respondents, so as to render them responsible for the injuries which attended upon and followed such faults.

If some of the witnesses had deposed one way and others the contrary; if the testimony on either side as to the cause of the disaster had evinced discrepancy, the case under investigation would have been one of greater difficulty; and taking it even as it presents itself, with but few contradictions in the statements of the witnesses it is still not by a hasty off-hand perusal of the record and the assuming of the facts at issue one way or the other that the litigant parties are likely to obtain justice, but such a desirable end is only to be attained by a careful and minute consideration of the entire evidence and by patient investigation and comparison of all the circumstances of the case; it is by these means only that the Court, holding the scales of justice, will be enabled to form a correct estimate upon the question, in whose favor does the balance of the evidence weigh? and such

an investigation the Appellant knows will be given by this Honorable Court to that enquiry as is bestowed upon all matters submitted to its consideration. The evidence in the case establishes that, in violation of the law, the portion of the street occupied by the building materials causing the obstruction complained of, exceeded two thirds of the width of that street; that the ground so occupied was not inclosed with a board or any other fence, and that no light, such as to be of any service to persons passing with carriages in the street, was at night kept upon them. In addition to this it was shown that the street where this state of things existed, and which was caused by one of the parties Respondent, and permitted by the other, is a great thoroughfare and the chief outlet of the city, over which, day and night, vehicles are constantly passing; that at such a place it was, above all things, peculiarly dangerous not to conform to the provisions of law made in regard of such matters, and that for the want of their observance there existed on the spot when the accident befel the Appellant, a great nuisance likely to cause mischief and endanger life; that this state of things was not of momentary duration but had existed for months; That the attention of the Respondents was called to the peril caused the public by it, but that not until after a severe injury to two of the citizens was any attention paid to their complaints, and it will be remembered that it was not even pretended by the Defendants in the Court below, that they were unaware of this public and vexatious annoyance, but on the contrary, they tacitly admitted the allegations of the Intervening parties that the portion of the street occupied, which caused it, was so occupied by their, the said Defendant's, permission.

It will be found also, by a perusal of the evidence, that persons were unable to pass freely in the street in carriages of any description, but were compelled to stop at the entrance of the passage left between the building materials heaped up there, that horses and vehicles had to be backed out of this passage if they happened to have entered it without perceiving a carriage at the other end, and that collisions were the frequent result of attempts to pass, by carriages too far in the passage to be backed out; and it may be fairly a matter of wonder that serious accidents, such as happened to the Appellant, were not of daily occurrence. It will be also seen, that within the limits assigned by law, the width of that street afforded abundant space upon which to deposit the materials required for the construction of any building, and, therefore, the wilful infringement of the law in this particular by the Respondents becomes perfectly inexcusable, and is indicative of such gross disregard of the convenience and safety of the citizens as to bear a close resemblance to malice; for it is supposed that a man intends that which is the natural consequence of his own act, therefore the wrong done the Appellant may even be looked upon as the result of a mischievous intention on the part of the Respondents to inflict it.

The evidence further shews that the street was covered not only to the extent of from two-thirds to three-fourths of its width, instead of only one-third as directed by law, but also to a distance of about one hundred feet in length, so that it may be readily perceived that, of a dark night, by the only light being a candle placed, not on the pile but on the footpath, in such a manner as, instead of illuminating the carriage way in any degree, only to cast the shadow of the pile of bricks upon it, this passage was rendered a perfect trap to carriages travelling over it. The testimony likewise establishes that for several feet outside the pile of bricks there were left large stones, against one of which the witness, James Woodley, deposes that he kicked his foot while examining the spot immediately after the occurrence of the accident in question, being unable to see it in the darkness of the shade caused by the pile, which stones necessarily must have exposed vehicles to peculiar danger at night, and will readily account for the collision of the carriages which took place then; and what will further indicate the cause of it is, that this part of the street, as stated in the evidence, was uneven and inclining towards the side furthest from the pile, that is, to the right side of the street entering the city, and as the Appellant was at the time approaching the city he was correctly on this, the lower side, and thus the vehicle with which he came into collision would be naturally driven upon him, not from any fault, but as well from that carriage being on the higher side as from the necessity under which the driver was placed to avoid these stones in his own front.

Then again it will be seen that this state of the street was brought under the notice of the members and officers of the Corporation, and that it could not, as the witnesses depose, but be known to them, and in fact, that ignorance of it, as before remarked, is not pretended by the Respondents, and even if it were, and in reality existed, such ignorance would have been inexcusable, therefore, the carelessness and indifference of the Respondents, both the Intervening parties and the Defendants in the Court below to the public weal, for which alone the latter were created a Corporation, is manifest, and it may here be remarked that although the party committing the nuisance may be considered, perhaps, more culpable than the other who but suffers and permits its continuance, still both these are before the Court agreeing that the damages to be obtained by the Appellant against the Defendants shall be borne by the intervening parties; they go hand in hand, they deny their liability, and pray that not they, but the Appellant himself may be held to have been the cause of the injury which he sustained.

The evidence also discloses the fact that, immediately following this accident these stones which the Appellant complains of as being the cause of the collision, and which the Respondents contend were rightly in the street and in no wise contributed to the Appellant's misfortune, were by themselves removed, and the street was then put in proper condition, but that not until that late period was this done although great inconvenience had been, up to that moment, occasioned the public, accidents, more or less annoying, repeatedly taking place even in the day time, and the matter had been universally looked upon and talked of as a perfect nuisance, while continued complaints had been made and it had become matter of wonder that such a state of things was suffered to exist. It was, notwithstanding all this, as the witnesses Robert Parnell and Alexander Farquher depose, not until after the accident had taken place which brought upon the Appellant the destruction of his horse and carriage and the very near loss of his own and his sister's lives that the Respondents thought it advisable to yield obedience to the laws; and now they desire to escape the consequences of their previous continued criminal neglect of duty by inducing the Court to believe the accident was not occasioned by their fault, and this, because it may be *possible* the collision which caused it might have taken place had they not been in fault, and because it was, perhaps, *possible* for two carriages to have passed each other without collision in the then condition of the street.

The Appellant however contends that the question is not whether such a thing was within the range of possibility, but is rather, was there a sufficient passage left, such as the law contemplated and enjoined should be left, for the convenience and safety of the public? Had the citizens that protection afforded them by means of fence and light which the Legislature prescribed? Did the accident occur at the spot where the injunctions of the law in these respects were violated, and does the evidence disclose a *prima facie* proof of the accident having been caused by the deficiency of the passage and the other infringements of the law of which the Appellant

complains, so as to render the Respondents amenable to him in damages? Now, this passage, which it is pretended by the Respondents was sufficient, and this space which was occupied by the one and stated by him to be so by the permission of the other of them, should have been such a passage as to be "*sufficient for the public and free from all embarrassments,*" (32 Geo. 3, chap. 9, sec. 68,) and be a sufficient portion of the street "*to allow persons freely to pass with their horses and carriages,*" (18 Vic., chap. 159, sec. 80), while it was in reality such that the witness, Robert Parnell, swears, "two vehicles could with difficulty pass one another, while "there was an inclination to the centre of the street to the parapet, which rendered it still more difficult." and he adds, "I always considered the obstruction unreasonable and exceedingly dangerous, and during the week of the "accident I noticed several large stones some four feet in length a good deal outside of, or beyond the line of the "pile of bricks, and these stones would expose vehicles to danger and accident, more especially at night; this "encumbrance was the subject of frequent conversation as being a dangerous public nuisance." Another witness, W. B. Valleau, deposes to the street being "particularly obstructed on the night of the accident," and says: "I had to stop my horse, and even then another waggon passing ran against mine, the passage was often so "narrow that two could not pass each other." Another witness, Adolph Kranth, states: "it was often "impossible for two vehicles to pass one another." Robert Richardson says, "that portion of the street was "continually thronged with vehicles, and the encumbrance there was exceedingly dangerous, for a fortnight in "October, two vehicles could not pass in the gap." Francis Milligan states, "I often remarked "that two vehicles could not pass through the gap between the encumbrance and the side walk." William Shoredicke, himself an officer of the Corporation, admitted that "two vehicles, *in the day time*, could not easily "pass one another." Alexander Farquhar swears "it was the common conversation with the people that they "never in their lives saw a street so encumbered. George W. Ellison says "I was often prevented passing "because another vehicle was coming in an opposite direction." James Woodley says "two vehicles could not "have passed without danger, and where one of the stones lay outside the pile of bricks, *two could not have* "*passed at all.*" John Walker says "a few days before the Appellant's accident he, the witness, very nearly "met with a similar one at the same spot;" and George Thompson swears there was one stone in particular that "prevented him passing another horse, and that he had to back out his carriage."

Then as to the space so occupied by the building materials it should not in any case have exceeded *one-third of the width of the street*, and should have been enclosed with a board fence at least ten feet high, (22 Vic., chap. 30, sec. 17,) and the materials should have had one or more lights kept on them during the night, (Regulations of the Corporation of 1818 and 1831). Now, not only does the evidence disclose that not one of the witnesses, even of those examined by the Respondents, say that the space occupied did not exceed one-third of the street, but it will be seen that the space encumbered more than doubled that sanctioned by law; one witness, Robert Parnell, declares that fully two-thirds of the street was covered, and says in addition, he saw several large stones four feet in length, a good deal outside of the pile; W. B. Valleau swears that on the night of the accident the street was fully three-fourths of the width encumbered; Robert Richardson swears to the same fact, as does also George Stevens; and James Woodley corroborates their statements by deposing to the street being covered two-thirds of its width besides a large stone which he saw three or four feet outside the rest; Dr. Robitaille, one of the Respondent's own witnesses, and himself a member of the Corporation, admits that the pile of bricks occupied a greater space than the rules of the Corporation allow; another witness, Joseph Bertrand, states that the day of the accident the stones extended six or seven feet further into the street than the pile of bricks; while another one, Pierre Gauthier, well knowing the peril which such stones would occasion to passengers, deposes that every night, to prevent accidents, they were particular not to allow them to project further than the pile, which assertion is disproven clearly by all the other witnesses.

Then, it is admitted on all hands, that there was no fence to enclose these materials, which enclosure would evidently have afforded a most material safeguard for the public, and would, beyond a doubt, have prevented the accident which occurred to the Appellant, as the rubbish would have been retained within bounds and the width of clear carriage way clearly indicated, and to such a protection the law gave him a right even though he should be driving an unruly horse through the street, nor would the Respondents cease to be wrong-doers because he might be travelling at night with such an animal.

As to there being a light upon the materials no one attempts to prove this to have been the case either; but the Respondents establish that a candle in a lanthorn was placed upon one of the houses which, although it probably threw a light on the footpath for foot passengers, is proven actually to have made matters much worse; for those using the street and travelling in carriages, inasmuch as the pile of bricks being between them and the light a shadow was thrown across their way. That there was no light upon the encumbrance is positively sworn to by Joseph Parnell, Nicholas Piton, W. B. Valleau, Ed. Smith, William Shoredicke, George Steven, James Woodley, and Alexander Adair; one of these witnesses, Edward Smith, swears that on the night in question Mr. Shoredicke, the Manager of the Quebec Water Works, observed this and exclaimed that it was a shame there was no light at such a spot upon the pile, and he, the witness, observed that the light was so placed as to throw the stones, outside the pile completely, in the shade of the bricks, so that persons driving could not see them; while James Woodley states there was one large stone which he was positive, from the darkness of the night, and there being no light on the pile, no person driving could have seen, and that he himself, while examining the spot, kicked against it before he became aware of its presence; and Alexander Adair states that the place where there was a large stone outside the pile of bricks was the darkest spot in the street. The evidence discloses also, that it was in this passage the collision occurred which caused the injury complained of.

Now the Appellant respectfully submits that evidence according to the nature of it affords different degrees of certitude, some may be positive and so direct that no Court could do otherwise than adjudicate conformable to it; other testimony may be of so uncertain a character as to form no sufficient foundation for a judicial decision, while in other cases the facts established may produce such strong presumption of the existence of the fact sought to be established as to leave no reasonable doubt in the mind of the Court and as fully to justify its assuming the fact as if it were directly and positively sworn to.

It is the office of the Judge to determine the value and effect of such evidence, as it is also his duty to discern between conflicting probabilities. The law throws upon him the responsibility of ascertaining facts in dispute, and it is a task which must be performed by him who endeavors correctly to administer justice, while the wise system of our law, with a view always to ascertain the truth and enlighten the Judge in the search of it permits and directs him, in cases of doubt, to make the subject more clear and certain by the examination on oath of the party in whose favor it is considered the balance of testimony exists. Pothier in his Treatise on Obligations, No. 925, says: "Lorsque la preuve du fait qui sert de fondement à la demande est déjà considérable

" quoi-qu'elle ne soit pas tout-a-fait complète, c'est le cas auquel le juge doit se décider par le serment de l'une " des parties. Il peut même, en ce cas, le déférer au Demandeur, pour suppléer par ce serment à ce qui manquait " à la preuve qu'il a fait."

Neither the laws of England nor of France require that the proof in a cause should be so positive that every fact must necessarily be established by direct evidence from the witnesses own knowledge, but the facts may in certain cases be inferred from circumstances which most usually attend their existence. If the evidence be such as may afford a fair and reasonable presumption of the facts to be tried, it is for the Jury under one mode of trial, and for the Judge under the other, to determine upon the precise force and effect of the circumstances proved, and whether they are sufficiently satisfactory and convincing to warrant the finding the fact in issue. Phillipps in his Treatise on Evidence, vol. 1, page 155, sec. 2, says "evidence consists of either " positive or presumptive proof; the proof is positive when a witness speaks directly to a fact from his own " immediate knowledge; and presumptive, when the fact is not proved by direct testimony, but is to be inferred " from circumstances which either necessarily or usually attend such facts. If the circumstantial evidence be " such as may afford a fair and reasonable presumption of the facts to be tried, it is to be received and left to the con- " sideration of the Jury to whom it belongs to determine upon the precise force and effect of the circumstances prov- " ed, and whether they are sufficiently satisfactory and convincing to warrant them in finding the fact in issue." A " presumption of any fact is properly an inferring of that fact from other facts that are known, it is an act of reason- " ing; and much of human knowledge on all subjects is derived from this source." In the Répertoire of Merlin, vol. 9, verbo preuve, page 767, sec. III, and of Guyot vol. 13, page 562, under the same word preuve, the authors treating, "Des différents degrés de certitude auxquels il faut que les preuves soient portées pour servir de base " aux jugements, writes as follows:—"La preuve considérée par rapport aux différents degrés de certitudes dont " elle est susceptible, est communément divisée en preuve complète, en demi-preuve et en preuve légère. I. La " preuve complète est celle qui établit une entière conviction dans l'esprit du Juge. La demi-preuve est celle " qui forme à la vérité une presomption considerable, mais dont il ne resulte pas une parfaite conviction. II. Il " y a sur cet objet deux différences très remarquables entre les matières civiles et les matières criminelles, la " première est que cette preuve est reputée complète dans les unes, et n'est que demi-preuve dans les autres; la " seconde différence est qu'en matière civile les demi-preuves produisent plus d'effet, et font plus d'impression " qu'en matière criminelle. III. Au reste, il est certain que dans un procès criminel, il ne faut pas autant de " preuves pour condamner l'accusé à des dommages-intérêts envers la partie civile, que pour lui faire subir une " peine affective ou infamante."

And indeed the law itself makes a large class of presumptions, and in many cases assumes the existence of certain facts until the contrary is proved, and even makes them binding on the Judge when not disproved by adverse evidence; and very frequently such presumption is founded entirely upon the probability that the circumstances inferred did take place, as in the matter of prescription, founded on the presumption of payment, which is sometimes a bar to the recovery of a debt, the law supposing such payment, because it is probable the creditor would not have allowed the period to have elapsed without bringing suit had he not been satisfied his debt; the law of England not even permitting evidence to the contrary, while that of France requires the oath of the party alleging such payment should be offered and received as a completion of proof.

The law again presumes the payment of arrears of house rent where the tenant produces receipts for three successive years subsequent to the period for which the rent is demanded, because it is not likely that the lessor would have received those later years' rent if the previous years had been due, and because, it is usually the case that the previous years rent are the first paid. The law presumes, in the case of the dismissal of an Attorney, that he was retained by the client if he be in possession of such client's documents relating to the business in dispute, because it is probable that he would not be in such possession had the party not retained him. Durnaton Vol. 13 No. 401, writes: "Les présomptions sont des conséquence que la loi ou le juge tire d'un fait " certain, pour connaître la vérité d'un fait dont on n'a pas la preuve, ces conséquences sont déduites de ce qui " arrive le plus ordinairement dans le cas donné," and Pothier in his obligations, No. 849, says: "Quelque " fois le concours de plusieurs présomptions que nous appelons *simples*, reunis ensemble, equipolle à une preuve."

In short, the law in many instances establishes presumptions even binding on the Judge, while in other cases it leaves to his prudence and discretion to draw as consequences facts deducible from that which ordinarily gives rise to the facts taken to be proved.

This being so, it is submitted there arises a strong presumption of the truth of the material fact alleged by a party when all the attendant circumstances which would naturally lead to the existence of such fact are found to be truly stated by that party, while all the pretended occurrences asserted by the adverse party, and which would tend to an opposite conclusion, are shewn to be untrue. Boonier in his Traité des preuves No. 370, says: " si l'une des parties a nié un fait qui se trouve ensuite clairement établi, les Juges se conformeront à l'esprit de " la loi, en déférant le serment à l'autre partie."

It will be remembered the Appellant, by his declaration, informed the Court below, that on a particular night he was driving his horse at an ordinary and reasonable rate along one of the streets of this city; That as he drove, he arrived at a certain spot that was encumbered with building materials to the extent of two-thirds of the width of the street; that the said portion of the street so encumbered was not enclosed to prevent accident that there he was met by another vehicle, and the night being dark, the building materials occupying so great a portion of the street, they not being enclosed by a fence and no light being kept upon them, and for want of sufficient space free from obstruction to enable the vehicles to pass each other, they became entangled, causing his horse to take fright, run away, and become unmanageable, whereby the accident occurred; that the Respondents were guilty of a neglect of duty in knowing and permitting the said street to be so occupied without an enclosure to protect passengers, or a light to enable them to see the impediments and avoid the danger caused by them.

Now, all these allegations are proven beyond contradiction, merely the accident which immediately ensued upon this condition of things is not by so direct and positive evidence established to have been so entirely caused by it as to exclude the possibility of its occurrence had the street been free from encumbrance, or to demonstrate that it could not have happened by the negligent driving of one or other of the carriages which came into collision. On the other hand, the intervening parties alleged that the materials in the street might legally occupy the space upon which they had been thrown, the contrary of which is undoubtedly the case inasmuch as they occupied over two-thirds of the width of the street, while only one-third could, under any circumstances, be lawfully so occupied.

Again, they assert that the accident was caused by the imprudence and fault of the Appellant of which there is also no proof unless it be found in the opinion of one of the officers of the Corporation, Joseph Rousseau, who says, he thinks that with ordinary precaution the Appellant might have passed the pile of bricks without coming into contact with it, because, he says, the pile of bricks extended only over about one-half of the width of the street, and there was sufficient space between it and the other side of the street to allow carriages easily to pass without touching; but this witness takes no account of the large stones left in this passage, proved to have extended as much as six feet into it, and this is the only witness who endeavours to shew anything like imprudence on the part of the Appellant by saying that he was trotting his horse while the other person with whom he came into collision was walking his, but he is obliged to admit that the Appellant was going at a slow or heavy trot; and the witness, William Sheridan, an officer of the Corporation, says it was a very gentle trot. Again, the Respondents alleged the Appellant was conducting a fiery and unruly horse, an absurd allegation, which assertion it was not attempted to prove, and the contrary was, by the Appellant, clearly shewn, the witness, John Houghton, a farrier, saying the animal was a very gentle horse; another, John Bourne, Major in the Volunteer Artillery, declaring him to be an admirable animal and well trained, and also stating that the Appellant was an excellent driver and exceedingly careful; and a third, John G. Sinclair, deposing that the horse was a quiet one, his fault being that he was too quiet and lazy. Finally the Respondents asserted that a sufficient passage was left to the public, the reverse of which is proved by all the witnesses examined on the part of the Appellant, although one of those of the Respondents, Dr. Robitaille, a member of the Corporation, testified he thought there was a sufficient space for two vehicles to pass one another, still he admits that he himself was in the habit, when passing the spot, of stopping to allow any carriage going in the opposite direction, to pass him, and although Joseph Bertrand, Edmond Lessard, Celestin Parant, and Louis Favreau, carters, in the employ of the Intervening parties, state that on the day of the accident they saw two vehicles pass each other in the passage, one of these witnesses saying he saw two carters pass each other on that day at a trot, this being indeed possible at a different hour of the day from that on which the accident occurred, as it is established the stones outside the pile of bricks were not left stationary but were often moved from one position to another, and two carriages might thus have passed at one moment, particularly in daylight, when the stones could be perceived, and thus perhaps avoided and have been unable to do so at another, more especially at night.

If, in addition to the presumption arising in favor of the Appellant, from the truth of the allegations by him made and the opposite character of those advanced by the Respondents, the Appellant has established clearly in the Court below, that the Respondents in every particular infringed the rules of their own body and disregarded the law of the land, if they did that which the Legislature expressly forbid, and neglected to do that which it prescribed; if those things which should have been performed and were left undone, were directed to be done precisely for the prevention of such accidents as that which happened to the Appellant, and which would inevitably, in all probability, sooner or later happen to some one, in consequence of their not being done; if the precautions which were not taken, yet, which the regulations of law and of the Corporation itself prescribed, were such as were directed to be followed out for the sole purpose of preventing such and similar disasters as that which befel the Appellant, is it not a legitimate deduction, that the accident which did take place at the spot where the things directed to be done were left undone, and where those prohibited were done, was the result of such disobedience to the law and disregard of the dictates of prudence, reason and duty?

The Appellant believes the Court below should have so held, as it may be seen those of France have done. Instances of such decisions are to be found, and they appear to be consonant to sound reason. In Merlin's Repertoire, vol. 9, page 683, verb. presomption, a case is reported in which the Defendant, one Vauchavet, was condemned to pay a sum of money to the Plaintiff, Piquet, because of the strong *probability of the truth* of the statement made by the former, and because that *if the Defendant were really not guilty he had been, at least, negligent;* the author writes "Les motifs de ce Jugement ont été pris dans les diverses circonstances de la "cause, de ce qu'il n'était pas probable que le sieur Piquet, qui jouit d'une grand réputation de probité répétat "une somme qu'il n'eut pas déposée et que si Vauchavet n'est pas coupable d'infidélité, il l'était au moins de "négligence."

Again, in the "Traité des Assurances D'Emerigon," par Boulay Paty, vol. 1, pages 410 and 412, are two reported cases, adjudged upon the same principle, awarding damages to the sufferer by an accident, on the probability that it was caused by the party who was shown to have been in fault. These were two cases of collision between ships, in one case the Court presumed the accident to have been caused by that ship which had disregarded the rules laid down for the prevention of such occurrences, and cast upon that vessel the onus of proving the cause of collision to have originated in the fault of the other vessel; the author writes thus, "Lorsque "deux vaisseaux se présentent pour entrer dans un port qui est de difficile accès, le plus éloigné doit attendre "que le plus proche ait défilé, et que le passage soit devenu libre, s'ils s'abordent, le dommage sera réputé au "dernier venu." In the other case the Court held that the accident shall be presumed to have occurred through the fault of that party whose negligence would likely occasion it; this was the case of one of the ships which had come into collision having been negligently left without a guardian; here the Court maintained the principle that the party evidently in fault shall be the party *prima facie* supposed to be the cause of an accident happening which was likely to occur by reason of such fault. "L'abordage est *présumé* procéder du navire "laissé sans gardien."

Our statute law at an early period prescribed that where materials for building were laid on the highways a sufficient way or passage should be left for the public; (36 Geo. 3, chap. 9 sec. 68); a subsequent act indicated more clearly what should be considered a sufficient passage and directed that all persons occupying a part of any public street, while erecting any building, should leave unoccupied and *free from all embarrassments* a sufficient portion of the said street to allow persons *freely to pass with their horses and carriages* (18 Vic., chap 150, sec. 80) and that statute was followed by a still later 22 Vic., chap. 30, sec. 17), which enacts that all persons building shall not in any case occupy more than one-third of the width of the street, and shall enclose the ground occupied with a board fence at least ten feet high, while the oldest rules for the regulation of the City of Quebec directed that not more than one-third of the width of any street within it should be occupied by such materials, and that one or more lights should be kept at night upon the materials. (Vide regulations for the years 1818 and 1831, pages 69 and 71 of printed rules).

All these regulations prescribed by the statutes of the Province and the rules of the City, have solely in view, and were intended for, the convenience, safety, and protection of the public. The great thoroughfare immediately outside the chief gate of the City where the casualty occurred was a spot which, more peculiarly than any other, required that these laws should be strictly attended to and observed. It is obvious it became the

duty of the Respondents to take care that they were so; the public have not required it, the public benefit has the Respondents altogether failed in this duty, thereby bringing the Appellant, and others who were using the highway, into a state of danger; they should now, for such glaring neglect, be held responsible to him, who, by reason thereof, has become a sufferer, and it is submitted the law justly punishes the Respondents first to be the cause of the injury when it has been shown that their illegal acts were such as were likely to have directly contributed to, if not entirely produced, the accident whereby the injury to his person and property was indicted; and he respectfully urges that, in obedience to the legislature, for the preservation of the goods and lives of the community at large care should be taken that regulations such as those which were totally disregarded by the Respondents should be rigorously enforced. The acts of the Respondents in evading them were absolutely and intentionally wrong, they directly and necessarily contributed to the inconvenience and probable injury of the public, they were acts known to be attended with danger to passengers. They were followed by a personal injury to the Appellant, for which he contends the Court below should have held the Respondents liable, because even if there had been room to doubt of their being the actual cause of the disaster, it is better to cast the loss upon the party who has neglected his duty in the open violation of the law, and thus deprived the other party of a protection against accident which the law directed he should have rather than upon the injured party, who merely using his public suffers damage, and to whom no blame is shewn to attach, for neither he nor the person with whose carriage he came into collision are to be presumed to have been in fault, so to throw upon the contrary to prove the collision must be considered a pure accident; but as to the Respondents they may safely and justly be presumed to have been the cause *sine qua non*, without which the accident would never have taken place and they may be fairly considered the immediate causers of the damage. Moreover, there is a want of public policy in refusing every protection that can be afforded to the limbs and lives of persons using the roads, by strictly holding both public and private bodies to the performance of their duty towards the public at large; numberless events shew that what is conducive to safety on roads should be strictly observed, and no doubt, the Judgment rendered in the Court below has a directly opposite tendency, is a manifest inducement to relax those rules and its effect will be to produce a continued non-observance of them.

The Appellant believes that in not holding those who have infringed those laws to be answable for the consequences that naturally flow from their breach, and that are shewn in all probability to have been caused thereby; there is error, and he consequently conceives himself entitled to have the said Judgment reversed, and to obtain, against the said Respondents, such condemnation for the damage which he has sustained as was sought for by him in the Court below, which condemnation he now respectfully prays this Honorable Court to award him.

ANDREWS & ANDREWS,

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Quebec, , 1850.

APPENDIX.

PLAINTIFF'S EVIDENCE IN SUPERIOR COURT.

BENJAMIN COLE, of the City of Quebec, in the District of Quebec, Auctioneer, aged above twenty-one years being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of the suit; St. John Street, without, is one of the principal thoroughfares of this city, and any incumbrance to this street would be dangerous to the passers by, especially if it were not at a distance from the City Gates. The street was much incumbered opposite Marois's building last season; Marois's house is about the fifth house outside St. John's Gate, on the right hand side going out; I was in the habit of frequently passing out that way during last season; it was only the day after the accident that I heard of it.

Cross Examined,—St. John Street, without, is a very broad street.

ROBERT PARNELL, of the City of Quebec, in the District of Quebec, Storekeeper, aged above twenty-one years, being duly sworn upon the Holy Evangelists doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I have lived for several years past in St. John's Street, St. John's Suburbs, and some distance above Marois's new building; during last summer, during the construction of the said building, I was in the habit of going up and down the said street, and passing by place some six times a day; for the first week in November last, and a month or two previous thereto, the street opposite Marois's building was obstructed with building materials, for about one hundred feet in the line of the said street, and to about two-thirds of the way across; from the obstruction to the south side of the street the space was so limited that two-wheeled vehicles could with difficulty pass one another, and there was an inclination from the centre of the street to the parapet, which would render it more difficult for vehicles to pass; I should think that St. John Street, without, is one of the first thoroughfares of the city, and is one of the principal outlets; I always considered the obstruction in question unnecessarily and exceedingly dangerous, and myself brought it under the notice of the police, and of members of the City Council, although at the present moment I do not remember which of them. I think it was Mr. Munn and Mr. McGreevy, at that time City Councillors; the obstruction in question consisted of brick, sand, timber, and large stone for columns; I do not remember the day of the month of the Plaintiff's accident; it was, however, a Saturday in November last; I noticed during the week of the accident several large stones,

of these four feet in length, a good deal outside of or beyond the line of the pile of bricks opposite Marois's house; they might have been from one to two feet beyond the line of brick, but in that narrow place six inches beyond the line would expose vehicles to danger and accident, and more especially at night; the stones in question were removed the week after the accident; the officers of the Corporation must have known of the incumbrance, as the police were passing continually and could not help seeing it; the incumbrance in question was the subject of frequent conversation amongst my neighbors as being a public hindrance and dangerous. On the evening of the accident I was returning from my office, when in St. John's street I noticed a dead horse upon a truck going down the street; when I made enquiries about this circumstance I was told of Mr. Barrow's having met with an accident; I know nothing further about the matter; I went to see him next day, but could not get an entrance; I have had some little to do with horses and from what I saw of the Plaintiff's horse I should say he was worth about thirty-two pounds ten shillings; I noticed particularly in going home that night, there was no light upon the incumbrance, but there was one hanging from the next building to Marois' house. I noticed the same thing frequently, that there was no light on the incumbrance; Marois occupies, and occupied during last summer, the adjoining house to the west of his new shop; the joint frontage of the two buildings might be sixty feet; the incumbrance in the street extended to the front of his shop, next the new building; I did not measure the width of the street though I did the length of the said incumbrance, and to the best of my calculating one hundred feet of the said street must have been occupied; when I say I measured it, I mean I paced it.

Cross Examined.—With the exception of Crown street, I believe, St. John street is one of the widest of this city; I think four or five horses with vehicles, could pass abreast opposite Marois's new building if not incumbered with building materials; I will not take upon myself to swear that two vehicles could not pass in the gap opposite Marois's new building without meeting with some accident, but in passing quickly the risk would be increased.

NICOLAS PRON, of the City of Quebec, in the County of Quebec, in the District of Quebec, Grocer, aged about forty-one years, being duly sworn upon the Holy Evangelists doth depose and say; I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit; I reside in St. John street in this city, and have so resided for several years past. St. John's street in St. John's Suburbs is one of the principal streets in the city and one of the principal thoroughfares, horses and vehicles continually passing night and day. I know the new house built for Mr. Marois last summer; it is, I think, the fifth house in St. John street without from St. John's Gate, and on the right hand side going out. In front of the said house in the said street there was an incumbrance last summer and last fall to the extent of more than half the street; the incumbrance, I considered very dangerous in the way I saw it. I passed there pretty frequently during the last summer and fall; this incumbrance must have been known to the Corporation, because no person could pass without noticing it, and more especially as the street was used for preparing the stone for the house, and also, because there was a large pile of bricks, and the police passed there daily. The incumbrance consisted of a pile of bricks, rubbish, stone, and stone in course of preparation for the building. Mr. Barrow's accident, I think, occurred on the first Saturday in November last. I saw him immediately after the accident at Mr. Bickell's grocery shop, the house nearest St. John's Gate inside; he had a deep gash on his forehead which was bleeding profusely. I assisted in holding his head while the Physicians dressed the wound; it was a student, I think, with Dr. Fremont that did so; Dr. Roy was also there. Being busy on Saturday night after the Plaintiff's wounds had been dressed I returned to my shop, but as Mr. Barrow had lost his hat I lent him mine; the next day, Sunday, I visited the spot where I understood the first cause of the accident to be, and found the obstructions I have mentioned above, still there; I had a tape line with me and measured the obstruction opposite Marois's said house, and the gap or distance between the said obstruction and the parapet upon the opposite side of the street, and I found the distance between the outside of the obstruction where the stones lay and the parapet on the South side to be fifteen feet, so that there was only fifteen feet of the road for vehicles to pass upon. From the outside of the incumbrance to the parapet on the north side there were nineteen feet, there might have been a few inches one way or the other, but as that parapet was covered with rubbish I could not take this distance as exactly as the other, however, from my measurement I made out that there were four feet more than half the road incumbered by the said building materials; I made a memorandum of this at the time. From what I saw of the road I do not think that two vehicles could pass each other on a dark night easily; two waggons could not. The night of Mr. Barrow's accident was a very dark night. I measured the spot again on Monday, when I found it different, some of the stones and beam removed and there was more space in the gap for vehicles to pass. There were then nearly seventeen feet clear; I have the exact distance on the memorandum which I looked at yesterday; I have not it now with me but I am positive as to the measurement. I measured the above at the request of the Plaintiff's brother who accompanied me when I did it; he held the end of the tape. No part of the street opposite Marois's house was enclosed by a fence; the first measurement I made on Sunday night after the accident; there was no light then upon the said incumbrance but one over the gateway of the adjoining building.

Cross Examined.—It was with a tape line I measured; Mr. Edmund Barrow assisted me. I measured the obstruction in several places. The narrowest part of the gap was fifteen feet, another place was fifteen feet nine inches, and in a third place a difference of a few inches; the obstruction from which I then measured was stone; the pile of bricks extended to about half the street. I am not positive whether the tape was English or French measure, but I believe it was English. It was dark when I made the measurement; we had to go to the gas lamp to see the figures on the tape, and after returning from the light I went back to the spot to verify my measurement, which I found to be correct; (I have just returned from getting my tape), it is an English measurement, I have just tried it with a foot rule. When I went out on the following Monday to remeasure the extent of the gap in question it was dark, but not so dark as on the Saturday. I was accompanied upon both occasions by the same person, that is, the Plaintiff's brother; I did not measure the width of the street between the parapets, but it is one of the widest streets in the locality. I do not know the ordinary width of a waggon but in driving we ordinarily look for sixteen feet for two ordinary vehicles. Question.—In the early part of November last had you occasion to go out several times in St. John's street. Answer.—I had. I might within the first week of November, gone out that way two or three times, but I do not now recollect; I live in St. John street, No. 51, within the walls.

WILLIAM BLANCHARD VALLEAU, of the City of Quebec, in the County of Quebec, in the District of Quebec, Merchant Tailor, aged thirty-seven years, being duly sworn upon the Holy Evangelists doth depose and say: I do know the parties in this cause. I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit; I live at St. Foy's, as my business is in the City I drive

in mostly every week day through St. John's road; this road is one of the principal thoroughfares of the city, and vehicles are constantly passing; I considered any obstruction in this road dangerous; I saw an obstruction last fall, opposite a house then being constructed for Mr. Marois, especially so on the evening on which the Plaintiff met with his accident; the road was then obstructed fully three-fourths of the road-way, by building materials for the said house; I went out that evening after dusk in my waggon; there was no light whatever upon the building materials upon the town side, whether there was one on the other I cannot say, but I am positive in saying there was none upon the town side. I am thus positive because I was driving up to the place after dark between six and seven, but of the hour I am not so certain of; when I saw a waggon coming down in the space between the said incumbrance and the parapet on the South side I had to draw my horse on the right hand side of the road below, that is on the side of the obstruction, and even in doing so the other waggon struck against mine. My horse was then stopped and I saw no light. The gap was so narrow that I had frequently, in driving in and out from town during the progress of the building, to stop my horse at the entrance of the gap, to permit the vehicle that had entered it first to pass; it being sometimes, on several occasions, too narrow to permit two vehicles to pass at the same time. I always considered it a public nuisance; I considered that about the latter end of October or early part of November last the incumbrance in question was greater than at any other time. The night in question was dark, nothing unusual at that season of the year; I know the police were stationed in this street, at John's Gate; but whether the Defendants were aware of the obstruction or not I cannot say. Speaking together with my friends and others, continual complaints were made at this time respecting the said encumbrance, especially those that make use of the road by driving.

Cross-Examined.—I am certain that it was after five that I went home on the evening on which the Plaintiff met with his accident. I generally leave town at five, but that evening I was detained till after five waiting for my brother-in-law, it was dark however. Question.—Did you on that occasion measure the width of the gap between the obstruction and the parapet on the opposite side of the street? Answer.—No, except as I usually did, with my eye. Question.—How do you know that the street was more obstructed on that evening than it usually was? Answer.—By having another waggon running foul of me, and by seeing a larger quantity of stone lying by at the lower end, that was my principal reason for stopping my horse. Question.—Is it not true that the street was not more obstructed on that occasion than it had been for some days previous? Answer.—It appeared to me to be more so, for the reason given in my previous answer. The stones, to the best of my belief, were lying on the town side of the pile of bricks, and my impression was and is now that that place was the most encumbered, I could not see further up. I am not certain whether the gas was lit at the time or not but I think it was, but I am positive there was no light upon the pile of bricks.

Marshall Murray, of the city of Quebec, Engineer, aged above twenty-one years, being duly sworn upon the Holy Evangelists doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them or interested in the event of this suit; I live in St. John's Suburbs, and have lived, there since May last, and during that time have been in the habit of passing up and down St. John's street, without about four times a day. St. John street is one of the principal streets in the city, and one of the principal outlets from the city, it being the thoroughfare for the St. John's, part of St. Louis, and part of St. Roch's Suburbs. Any incumbrance in that street would be dangerous and would be a great annoyance to passers by. I know Marois's new house in St. John's Suburbs; it was commenced during the summer of last year. It is the fifth house outside St. John's Gate, on the right hand going out. There was an incumbrance in that street opposite Marois' for several months last summer and fall up to the earlier part of November; the encumbrance consisted of building materials for the said house, and it appeared to me to extend fully to the half of the street and sometimes even beyond it. What extended beyond the half of the street was generally beams, and that was all I took any particular notice of. In passing I frequently noticed, in this place, that vehicles coming in one direction would have to wait for those coming the opposite way before entering into the gap between the encumbrance and the parapet on the south side of the said street. The greatest annoyance that I perceived was that foot passengers had to leave the parapet and go around the encumbrance. I did not often drive out this way. I often spoke to others at the time respecting the encumbrance, and wondering with them that it should be allowed. I am not aware whether it was brought under the notice of the Corporation. I do not think they could have been ignorant of it. I passed down John Street about ten minutes after Mr. Barrow had met with his accident, and seeing a crowd as I was passing John's Gate, in stepping towards the crowd, I saw a horse lying dead with two of his legs broken, I was there told it belonged to the Plaintiff. This was on a Saturday in the early part of November last.

Cross-Examined.—I live in St. Joachim street, St. John's Suburbs, and very frequently pass in front of Marois' new building. My shop being in town, I had to pass nearly every day in front of Marois' building.

Adolph Krauth, of the City of Quebec, in the District of Quebec, Watchmaker, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related allied or of kin to, nor in the service nor domestic of either of them or interested in the event of this suit. I live in St. John Street, in St. John's Suburbs, in a house this side of Marois' new house which was commenced some time last summer. The street opposite the said new house, and even opposite my own was, during last fall, till the first week or so in November, partially blocked up by building materials for the said house. Sometimes it was more or less blocked up; but I often saw that it was impossible for two horses and vehicles to pass abreast, and sometimes those coming one way had to wait for those coming in the contrary direction, that is when they were carting stones. I am certain that one half of the street at least was blocked up, at times there was more. This was at the latter time, about the end of October, when they were cutting or preparing the large stones for the top of the house. I heard my neighbours complaining of the state of the street at the time. I only heard of Mr. Barrow's accident some three days after it occurred. There was no fence to enclose the building materials.

Cross-Examined.—I believe that Marois' new building was commenced some time in the month of June.

Charles James Fremont, of the City of Quebec, in the District of Quebec, Surgeon, aged about fifty years, being duly sworn upon the Holy Evangelists, doth depose and say; I do know the parties in this cause, I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. On the sixth of November last I was called upon to visit the Plaintiff in this cause, about six or half past six in the evening; I saw him in at Bickell's near St John's Gate, he had a great gash on his forehead. As Dr. Sewell, his regular medical attendant, came in a few minutes, I merely dressed the wound on the forehead and left the case in Dr. Sewell's hands. Beyond the wound on the forehead, I do not remember whether the

Plaintiff was much injured. I have not sent in my bill, the patient being Dr. Sewell's, he would charge not I, and these are amenities understood in the profession, and which we are frequently called upon to return.

Cross-Examined.—The night in question was a dark one.

EDWARD SMITH, in the County of Quebec, in the District of Quebec, Time-keeper, aged about twenty-three years, being duly sworn on the Holy Evangelists, doth depose and say: I do know the parties in this cause, I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I have been off and on in the employ of the Defendants; I expect to be soon employed by them again. I am a brother-in-law of William Shoreditche, a witness examined in this cause. On the sixth of November last I was in St. John's street between seven and eight, and I think to the best of my remembrance, though as to the hour I won't be positive. It was before my tea; at that time of the year I generally take tea about six, though on this occasion I know it was late. I then, in coming up John street, saw a crowd assembled opposite Pardy the brass founder's, in the second block on this side of John's Gate; I was then alone, I met my brother-in-law a few minutes afterwards and walked out home with him, when opposite Marois new building he made this remark to me, "It is a shame that there is no light upon this pile of bricks," I said, "Yes, that had it been the fault of the Water Works department there would have been a fuss about it." I live in St. John's street without, a few houses above Marois, in the next block. I was in the habit of passing Marois' new house on my way home, perhaps three or four times every day during last fall. The street opposite the said house was very much encumbered during last fall with building materials for the said house, such as timber, bricks, blocks of stone, &c. I should say that the street was encumbered at that place to the distance of more than one half across. I did not see anything of the accident the Plaintiff met with; I only saw his horse after it was down opposite Pardy's as aforesaid. I saw Mr. Rousseau opposite Pardy's; I can't say whether he walked home with us or not; I think Mr. Burns did; but this was after the accident occurred as aforesaid. I know nothing else about the matter.

Cross-Examined.—I am not certain as to the hour I met my brother-in-law; I believe it was after seven on the day of the accident.

THOMAS MILLER, of the City of Quebec, in the District of Quebec, Horse-dealer, aged forty-six years, being duly sworn on the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I have been dealing in horses these twenty-five years. I consider the horse, two of whose legs were broken, to be entirely useless and of no value whatever; I would shoot or kill such a horse. I do not think that a horse, two of whose legs were broken, could be made any use of even if the bones could be knitted together. If I had the most valuable horse in the world and such an accident was to occur to him, I would not endeavour to cure him, but would kill him.

Cross-Examined.—A horses skin might be worth from a dollar to a dollar and a half.

Joseph Rousseau, de Québec, dans le comté et District de Québec, Magon, âgé de 43 ans, étant dûment assermenté sur les Saints Evangiles dépose et dit; Je connais les parties en cette cause; je ne suis ni parent, ni allié, ni serviteur, ni domestique d'aucunes d'elles, je ne suis point intéressé dans l'événement de ce procès. Je suis un des employés de la Corporation de la cité de Québec, comme foreman de l'acqueduc. Je demeure dans la rue St. Jean, faubourg St. Jean. Je me rappelle de l'accident qui est arrivé au Demandeur, c'était un Samedi au soir vers six heures. Lors de l'accident je remontais la rue St. Jean, du coté Sud du même coté de la rue que le Demandeur descendait. Là ou l'accident est arrivé il y avait un embarras dans la rue, c'est un monceau de pierre de taille et de briques. La première chose que j'ai entendu a été le choc de deux voitures, celle de Monsieur Barrow descendait vers la ville, et l'autre montait vers le faubourg. C'est tout vis-à-vis l'embarras en question que les deux voitures se sont accrochées. Après que les voitures ont été accrochées j'ai entendu comme une voiture qui allait très vite, j'ai entendu crier une femme; j'ai retourné et suis allé voir ce que c'était, et j'ai vu monsieur Barrow qui entrait chez Bickell. Un peu plus loin, j'ai vu le cheval de Monsieur Barrow à terre, il avait une patte de devant de cassé et une en arrière.

Trans-questionné.—Quand l'accident est arrivé il fesait bien brun. Quand les deux voitures se sont rencontrées j'étais vis-à-vis la nouvelle bâtisse de Monsieur Marois, dans le faubourg St. Jean. J'étais du côté du sud. Le tas de briques qui était vis-à-vis la bâtisse de Monsieur Marois pourrait occuper la moitié de la rue, et cette rue est une des plus large de la cité de Québec. Lorsque les deux voitures se sont rencontrées, c'était vis-à-vis le tas de briques. La voiture qui montait la rue St. Jean était du côté de la pile de briques, et montait le pas. La voiture du Demandeur descendait le trot du coté opposé de la rue, c'est-a-dire du côté Sud, mais c'était un trot bien pésant, il y avait assez d'espace entre la brique et l'autre côté de la rue, pour que deux voitures passaient aisément, sans se heurter; et il me semble qu'avec la précaution ordinaire le Demandeur aurait pu passer sans accrocher. Je n'ai pas pu voir comme il faut s'il y avait une espace entre la voiture du Demandeur et le trottoir, mais je montais sur le bord du parapet, et il y avait une espace entre la voiture et moi. Quand j'ai d'abord vu le Demandeur, il tenait le milieu de la rue, et ensuite il s'est mis du côté sud de la rue, pour passer à côté et laisser passer l'autre voiture, Monsieur Barrow croisait la rue pour prendre du côté du sud, et il était alors à une distance d'environ dix pieds de moi, et plus haut que le tas de briques, et moi j'étais alors un peu plus haut que la pile de briques.

Re-examiné.—Je n'ai jamais mesuré la distance qu'il y avait entre la pile de briques et le bord du parapet, mais je pense qu'il y avait dix-sept à dix-huit pieds. Je passais là tous les jours, et j'ai pu juger, à l'œil, de la largeur. Je ne sais pas la largeur de la rue, mais je pense quelle à environ une quarantaine de pieds d'une maison à l'autre, et même plus elle peut avoir cinquante pieds.

JOHN HOUGHTON, of the City of Quebec, in the County of Quebec, in the District of Quebec, Smith and Farrier, aged sixty years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause, I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I have been for the last thirty years a resident in this city, and practising as a Farrier. I consider that a horse, two of whose legs are broken, to be perfectly useless; in short I say that any horse that has one of his legs broken is perfectly useless even though the bone should afterwards knit, and any horse with two legs broken I consider that the best thing to do with him would be to shoot him. The

carcass of a dead horse might be worth his skin, that is five shillings. I know Mr. Barrow's horse; I consider him, at the time of the accident, to be worth from forty to fifty pounds.

Cross-Examined.—I have known Plaintiff's horse, and to the best of my opinion he was about seven or eight years old.

JOHN JAMES SAURIN, of the City of Quebec, in the County of Quebec, in the District of Quebec Carriage Maker, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. The Plaintiff's waggon, broken by the accident on the sixth of November last, I have seen it at the Plaintiff's house; the repairing of it might cost about twelve pounds ten shillings. It is badly broken. A waggon, including the wheels from outside to outside, averages from five feet three inches to five feet six inches in breadth.

Cross-Examined.—From the appearance of the waggon I think it must have been built by some person living in the Suburbs. I do not know how long it has been built; from the appearance of the wheels it may have been run a year or two, but we cannot be exact to time of a few months. The waggon was not a plain waggon as it forms a second seat occasionally. The wheels were injured, the axle broken, and in fact the most parts were broken. It could not be made as good as before the accident unless at very great expense.

Re-Examined.—I would not build a waggon like that under thirty pounds or thirty-two pounds. To make the waggon as good as before it should cost about eighteen or twenty pounds, that is to thorough repairs, painting newly, trimming newly, and covering dash end, &c.

JAMES SEWELL, of the City of Quebec, in the County of Quebec, in the District of Quebec, Medical Doctor, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I am the Plaintiff's Medical attendant, and have been so several years past. On or about the sixth of November last past I was called upon to attend him, I found him at Mr. William Bickell's, in John Street, on my arrival I found Dr Fremont there who was in the act of concluding the dressing of a wound in the forepart of the head. The sister being seriously injured I attended her at that visit more particularly. After this I continued to attend Mr. Barrow for some three or four weeks at different times. The Plaintiff complained frequently of pains in the back of the neck and about the shoulders as the effect of the accident. He never showed me the parts. He complained of this during my first attendance and more or less since that time. The Plaintiff had his head bandaged up for a long time after the accident and was in a very nervous state since then. I cannot say how long he was detained in the house in consequence of this accident, but I attended upon him for three or four weeks at different times. I cannot say what affect the blows had upon his general health, but since the accident he has been very nervous. My charge may be between three or four pounds, exclusive of what I have to charge for Dr. Fremont's services at the first visit, which will be about five dollars. Mr. Barrow has not spoken to me for some time respecting the wounds he received at that time. The Plaintiff was confined to his house, in consequence of the accident, to the best of my belief, for about a fortnight. There was a considerable gash on the forehead, the edges of which were brought together by needles; There will be a scar in consequence.

Cross-Examined.—I do not recollect the Plaintiff having more than one wound on the forehead. I did not examine any other part of his person.

FRANCOIS XAVIER GARNIER, of the City of Quebec, in the County of Quebec, in the District of Quebec, Clark, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor a domestic of either of them, or interested in the event of this suit. I am in the employ of John W. Barrow, the Plaintiff in this cause, and Edmund Barrow, Merchants and co-partners, of this City. Some time in November last, I am aware that the Plaintiff in this cause met with an accident while driving in St. John's Street, without. There was a gash in Plaintiff's head and he was otherwise disabled. In consequence of which he was kept away from his business for three or four weeks after the accident happened. The Plaintiff is still obliged to keep his head bandaged in consequence of that accident.

Cross-Examined.—I believe the Plaintiff was confined to his bed three or four days, but I believe he was three or four weeks before he could stir out.

PATRICK MCKNIGHT, of the City of Quebec, in the District of Quebec, Carriage maker, aged nineteen years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I am in the employ of Mr. Saurin, being the foreman of his coach factory. I have seen the Plaintiff's waggon, and to the best of my belief it would cost about seven pounds ten shillings to put it in the same repair it was in; that is, to put new wood where it was broken, to repair the iron which was broken and straighten it where it was bent. It would cost seven dollars more to varnish it, but then it would be better than before it was broken. There was an apron over the back. I did not see the second seat.

Cross-Examined.—I saw the said waggon for the first time last evening. When I saw it I thought it was a single waggon. The back was covered with a leathern apron. It appeared to me to be a second-hand waggon. I am informed that it is the same waggon as that referred to by Mr. Saurin, and I have no doubt but that it is the same.

ROBERT RICHARDSON, of the City of Quebec, in the County of Quebec, in the District of Quebec, Master Shoemaker, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. St. John's street, without, is one of the principal thoroughfares of the city, and is continually thronged with vehicles. It is the principal outlet from the city to St. John's and St. Lewis Suburbs; more go through St. John's Gate to the St. Lewis Suburbs than through St. Lewis Gate. I consider that any incumbrance in such a street exceedingly dangerous, and there was, during

last year, a very great incumbrance in that street opposite to a house then building for Mr. Marois, and to a shop adjoining. My house is the second shop above Marois's new building, and where I resided and carried on my business last summer. To the best of my knowledge the extent of the breadth of the said incumbrance was, at least, three-fourths of the street, and for about a fortnight in October last it was so great that two vehicles could not pass each other in the gap between the incumbrance and the parapet on the opposite side of the street. During that time I very frequently saw vehicles going one way having to stop before coming to the entrance of the said gap to permit vehicles in the gap coming in the opposite direction to pass through before entering it. In the early part of November last they were then cutting the stones, brought rough in block from the quarry, for the top of the building, they were cutting them in the centre of the street, and sometimes more on the other side of the street than in the centre; and about the month of November there were still bricks in the street [illegible] further than the centre of it. I cannot particularly state whether the bricks extended further than the stones, but I know that the incumbrance took nearly three-fourths of the street as I have stated above. My neighbors and persons coming into the shop, about this time, continually complained of the manner in which the street was continually taken up by the building materials. I heard of Mr. Barrow, the Plaintiff's accident almost immediately after it had occurred; the night was a dark one. Almost every night I saw a light upon the pile of bricks but I cannot say that there was any on that night as I did not take notice; there was no light upon the upper part of the encumbrance at any time where I think there should have been. As the stones were apart [illegible] to allow a vehicle and horse to pass between them, there being no light as a warning or guide, the stones extended to the middle of my window in the street. The light that was generally placed upon the bricks was placed on the town side of the bricks, and was in such a position as to throw the stones on the country side of said pile of bricks into the shade so that persons passing or driving could not see them. I heard the Chief of Police and Mr. Larue, the contractor of Marois's building, having hot words together respecting the incumbrance in question, this was sometime in October last, and when the said Chief of Police told Mr. Larue that he must move the incumbrance further back.

Cross Examined.—There is a lamp post on the south side of the street and opposite to Mr. Marois's shop which is next to his new building. Question.—Is it not true that that lamp threw light upon the stones which were lying above the pile of bricks. Answer.—It threw light upon part of the stones, but some of the stones were too far up for that, some of them being even opposite my window, in fact, it would have wanted half a dozen lights to enable persons to get through the encumbrance safely; that is my opinion. I never saw any light either on Mr. Marois's new house, nor on his shop adjoining. I never saw building materials so recklessly thrown in the street as they were by the people who were constructing Marois's house. The second block from John's Gate contains four houses, in the fourth of which I reside. There is a lamp post at the corner of St. Eustache street, that is at the corner of St. Eustache and St. John's streets; there is also a lamp post at Stokes's corner. The house in which I live is about sixty feet front, and is occupied by Mr. O'Regan, Miss Donaghue, and myself who have each shops in it, and I believe that the three other houses that is the house in which Stokes lives, Marois's new building, and the house which he occupies as a shop, have each about forty feet in front.

Francis Milligan, of the City of Quebec, in the County of Quebec, in the District of Quebec, Piano-Forte Maker, aged seventy-one years, being duly sworn upon the Holy Evangelists doth depose and say: I do know the parties in this cause. I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I reside in St. John's Street, St. John's Suburbs; on the opposite side of the street to Marois's new building but one house above it. Marois's new house is the fifth house to the right hand side outside, St. John's Gate and St. John's street is one of the principal outlets and thoroughfares from the city. Any encumbrance so near the city as Marois's building in St. John's street I consider dangerous. There was an encumbrance, last summer and fall, consisting of stone and brick opposite Marois's house extending into the street, but to what distance I cannot say not having measured it. I often noticed while the said house was in course of construction, that one vehicle would have to wait for another coming in a contrary direction to permit the vehicle to pass through the gap between the incumbrance and the parapet on my side of the street. I heard a noise in the street on the evening upon which they say Mr. Barrow's accident occurred, and the next day I heard that the Plaintiff's horse ran away and that he met with an accident. I was then sitting in my shop reading a newspaper, I paid no further notice to it, and I did not stir from my chair. I have no gas burning in my window like in dry good shops, but I have one in my sale shop at night. My neighbor, Mr. Fournier, on the town side, and myself are under one roof; the gas lamp is at the centre of the house door between us both and may be about twenty-one feet to the country side of Marois's new building but on the opposite side of the street. I never interfere with my neighbors and consequently never heard of any complaints about the road being encumbered.

Cross Examined.—The house which I occupy in St. John's Suburbs is the third house of the second block, on the south side of St. John's Street. I believe that Marois's new building is the second house from the corner of the second block of the north side of the said street.

John C. Stokes, of the City of Quebec, in the District of Quebec, Grocer, aged above twenty-one years, being duly sworn upon the Holy Evangelists doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit; I lived, last year, and am still living in a house in St. John's street, without. This house forms the corner of the second block outside St. John's Gate, and is next to a house in course of construction for one Marois. Marois's house was commenced some time last summer, either in July or August. I think my shop is the north-east end of the house forming the corner. Under the same roof with myself is the shop of Messrs. Krauth & Co., Watchmakers. My house, that is the one in which my and Messrs. Krauth's shops are is about forty feet in length. At the corner is a gas lamp, just at my door. Since Marois's building was commenced up to about the commencement of the winter, that portion of the street opposite the said house was was much encumbered with stone and brick and other building materials for the construction of the said house; The house is the largest building in the suburbs and one of the finest in the city; it is four stories high and of cut stone, with a cornice over the first and fourth stories. A large portion of this stone was cut opposite the building, in the street. There was no fence around the building material in the street. The pile of bricks extended to the centre of the street, sometimes it might be a little more or less. The pile of bricks was on the city side, opposite the building, in the street. The sand and stone were above that on the country side, but whether they extended further into the street or not I cannot say as living on this side of the building I very seldom passed it. I remember the day upon which the Plaintiff in this cause met with his accident; it was a Saturday in the early part of November last. The street opposite the building was encumbered that day. The pile above mentioned was there; there was also stone and other building materials. I was up at my tea when

the accident occurred, but upon coming down to the shop I heard of it. I opened the door then to see whether there were any signs of the accident but saw nothing. I did not take particular notice whether there was a light on the pile of bricks that night though there generally was one. My shop was full of people at the time and I wished to serve them and did not look any further about the matter. The night was a dark one, cold and rainy. Mr Barrow's horse was a good horse, and was a valuable horse, though [illegible] at a higher price than I would put on him. I should think he was well worth thirty-five pounds. I have now been living nine years where I am now living in John Street aforesaid, and I have a large sign on St. John Street and have had it during all the time.

Cross-Examined.—I cannot say whether the gas was lighted on the evening in question although it might have been. I ran out and returned in a hurry to serve my customers, however, the night was a dark, cold, dreary one. There is a lamp post at the corner of my house, at a distance of about forty feet from Marois's building. There is another lamp post opposite Mr. [illegible]'s, facing the said new building. In the month of November the gas lamps are generally lit between five and six o'clock; I mean in the early part of November. Mr. Barrow's horse always appeared to me to be a quiet horse. The fault that I had with him was that I always thought him to be too quiet and lazy.

Re-Examined.—Mr. Marois's house might have a frontage of about forty feet. The pile of bricks I [illegible] of was about [illegible] to ten feet in height, but in the evening in question it might have been [illegible] high, and might have had a frontage of eighteen or twenty [illegible].

WILLIAM SHORTREED, of the City of Quebec, in the District of Quebec, Manager Quebec Water Works, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. On Saturday the sixth of November last, I saw the Plaintiff's [illegible] sister, in Mr. Bickell's grocery shop near St. John's Gate, within the walls of this city, he was then bleeding very much from the head from being thrown out of a waggon a few minutes before. I was going up St. John's Street without, and when I came to a pile of bricks on the right hand side going out, opposite a new house in course of construction for one Marois, I noticed before I came to these bricks a waggon coming down John's Street, I then heard something break, as if it had come in contact with another waggon; I was behind the pile of bricks and the night being dark I could not see what was going on. Immediately after the noise of the break down or crash I saw a man in a waggon whipping his horse up John Street, and a little above the pile of bricks; my own private opinion at the time was that he must have come in contact with another waggon and was endeavouring to escape. I cannot state positively but I apprehend that the waggon I saw coming down, that is towards the city, was the waggon that was broken as above mentioned. I made no enquiries as to whose waggon it was, and cannot say whose it was. Immediately after the crash I heard a voice crying out "whoa, whoa!" and turning round I saw the horse and waggon which I had seen coming down as aforesaid. The horse appeared restive and inclined to break; I saw him break into a gallop and fearing some accident, I turned round and ran as hard as I could towards St. John's Gate; when I arrived at St. John's Gate there was a great crowd. I saw a lady who appeared much injured being led by two men and taken into Mr. Bickell's grocery store. The lady was stated to me in the shop to be a Miss Barrow, the Plaintiff's sister. I saw the Plaintiff there at the same time. This must have been between six and seven o'clock in the evening. After leaving the shop I saw the waggon and the horse. I think both shafts of the waggon were broken. The horse had two of his legs broken, a fore and a hind leg. At the time I heard the horse and waggon were Mr. Barrow's. I knew Mr. Barrow by sight and had previous to the accident had communication with him on business, once or twice. When the waggon was coming down John's Street, before it came to the pile of bricks, it was coming quietly down. I have no doubt but the waggon that I saw coming down quietly was the waggon I afterwards saw broken at John's Gate, and which I was informed belonged to the Plaintiff. Immediately after the crash I followed it as closely as I could keep up at a run, but it was out of my sight before I came up to it, but I did not observe any other waggon going down, and I had just come through John's Gate and there was then no broken waggon there. When the waggon was coming down there were two persons in it, one a gentleman and the other was muffled up. I could not say whether the person muffled up was a gentleman or lady. I did not recognize who the driver was, because the night was darkish and I could not see. I do not know the width of the street opposite Marois's house. There was no light upon the outer side of the encumbrance in St. John's Street where the accident happened at the time of the accident. The encumbrance consisted of a large pile of bricks and a large quantity of stone required for Marois's building. I passed the place about twice or three times a day and I should say the distance between the pile of bricks and stones and the parapet on the south side of the street might be about fourteen or fifteen feet, but I did not measure it. I should say that between one-half and two-thirds of the street was encumbered by the said building materials. There was no fence outside of this building material, that is to say, it was not fenced around. After having seen the accident, in returning from Mr. Bickell's, I paid particular attention to see whether there was a light on or about the said building materials, there was none. This might have been about half an hour after the accident that I looked for the light and found none as I have said above. In the day time I have often observed, in consequence of the encumbrance of Marois's building material, the street was obstructed and horses and vehicles were obliged to stop to allow those coming in an opposite direction to pass, as two vehicles coming in contrary directions could not easily pass at the same time in consequence of the street being so encumbered by the said building materials. John Street, without, is about the widest street in the Upper Town. When I say that two vehicles could not pass together, coming in contrary directions, I mean to say that, generally speaking the obstruction was caused by a cart unloading building material. I was in the habit of driving out frequently. I never paid any particular attention to the width of the street. I cannot say that I know Stokes the grocer's house. Marois's house is in the second block outside John's Gate, and the second or third house therein and is within the limits of the City of Quebec. The persons whom I saw about the waggon and in Bickell's shop at the time of the accident were Joseph Rousseau, Edward Burns, and my brother-in-law, Edward Smith; that is all I remember.

Cross-Examined.—I think that the gas lamps were lit at the time of the accident, but I am not positive. There is a lamp post on the opposite side to Marois's building, a little higher up. The horse which was harnessed to the waggon and which I saw coming down near Marois's building was coming down at a very gentle trot and appeared to me to keep to the south side of the street. I lost sight of the waggon coming down a little before I entered behind the pile of bricks, and I suppose the waggon was at a distance from the pile of bricks of about fifteen yards at the time. At the time I might have seen the waggon without the gas being lit. When passing in a caleche opposite Marois's new building I repeatedly met and passed other vehicles either coming up or down the street, in one word, there was enough space between the parapet of the south side of the street and the

building materials to allow two vehicles to meet and pass. I did not observe the waggon which was coming up until after the noise of the crash. There is also a lamp post at the corner forming the second block from John's Gate, which is near to Marois's building. I swear that there was no light on the evening in question upon the bricks or building materials; I am positive for I took particular notice, but I will not swear that there was not one upon the fence of Marois's house, that is, at the time of the accident.

Re-Examined.—I do not recollect having passed up or down John Street on the day of the accident, in a vehicle. I do not know what the distance between gas lamps is.

ALEXANDER FARQUHAR, of the City of Quebec, in the District of Quebec, Auctioneer, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I reside in St. John's Suburbs of this city, in St. John's Street, without, and on the opposite side to Marois's house, and about one hundred feet lower down, and have resided there for several years past. From about the middle of last summer to about the middle of November last, the street opposite to Marois's was much encumbered by building material for his house then in course of construction. The building material which caused the obstruction consisted principally of a large pile of bricks, large stones for the pillars of the house and for casting, sand, lime, and large beams. I saw many of the workmen cutting the very large stones in the street. The street was so much encumbered by the said building materials during the time aforesaid, that though two vehicles might pass one another, still, to do so was not easy, and I frequently saw vehicles going one way having to stop at the said encumbrance to permit those coming in an opposite direction to pass, in that portion of the said street between the said encumbrance and the parapet on the south side. On a Saturday evening, in the early part of November last, Mr. Barrow, the Plaintiff, met with an accident by which he was much injured. I did not see the accident, but saw the horse galloping down past my door; I could not say who was then in the vehicle. I was inside the shop and hearing a noise went to the door and seeing the horse galloping down, I followed him as fast as I could. Inside the Gate I saw the Plaintiff's broken carriage. I went into Mr. Bickell's and saw persons washing fresh wounds which the Plaintiff had just received in the head. At that time the Plaintiff's wounds appeared to be very dangerous, and he appeared to be much injured. The vehicle appeared to be much injured. I saw different parts of it lying about. I then went down to the next block and saw the Plaintiff's horse lying there and two of his legs broken. The horse could not rise and the legs were so much broken that I saw the bones sticking through the skin, and the part below the fracture dangled upon any one lifting the leg. I considered that the horse was rendered useless, and those around me said he would have to be shot. I did not remain long there as I had to attend to my auction sales that night, and immediately returned home. I do not recollect having paid any attention as to whether there was any light on the encumbrance. The street opposite Marois's house was not always so much encumbered, as it was on the day of Mr. Barrow's accident, by the building materials. On the Monday following a good deal of the stone and rubbish which extended beyond the pile of bricks into the street, was moved back towards Marois's house at least a yard, it might be nearer two. I should say that upon the Saturday of the accident, stone and other building materials extended into the street from Marois's building to beyond the pile of bricks to the distance of at least six feet, the height I cannot exactly say, I did not pay much attention to that, but I noticed that the upper end of the street opposite Marois on that day and for several days previous there were several stones further out in the street than I had previously seen them, and extending beyond the line of the brick pile by several feet. From the nature of my business I go frequently out and in of my shop, and had frequent occasions of seeing the state of the street and the manner in which it was encumbered, in fact I could not go in or out without seeing it. Before the accident occurred I heard people complaining of the encumbrance of the street saying that they never saw a street so much encumbered in their lives, that was the ordinary conversation. There was no fence outside the building material.

Cross-Examined.—The accident in question happened about six o'clock in the evening, it might have been a quarter to six or a quarter after six, but I am certain the gas was lit at the time. When the horse passed my place he was galloping. I saw him between myself and the gas on the opposite side. I paid no particular attention to the state in which the street opposite Marois building was, at the time of the accident, but it appeared to me to be in the same state as it had been in a few days previous, I observed no particular difference. I did not say how many days before the large stones were placed there, but they were continually changing their places or positions. I cannot say what distance there was between the large stones and the parapet on the opposite side of the street, but vehicles might have passed with easy driving. There is a lamp post opposite Marois, but I think, a little above it, and another one at Stokes's corner.

GEORGE STEVENS, of the City of Quebec, in the District of Quebec, Shoemaker, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I live in St. John's Street, without, some four houses below Marois's new buildings and so resided during last summer. The street opposite the said house was much encumbered and obstructed during the course of the erection of the building, by building material, and for the first week of November, and two months previous thereto, the street opposite the said building of Marois was encumbered, to the best of my observation and opinion, three quarters of the road by the said building materials, and during that time almost every one who came into the store complained of the manner and extent to which the street was taken up by the building materials, and I frequently saw, that is two or three times, vehicles going in one direction having to stop for those coming in another in order to pass the gap between the obstruction and the other side of the street, this was in the course of last summer. I have often passed the obstruction in question at night, when it was dark I have often seen it without a light though often there was light. During part of the season the light was suspended from the walls but during the latter part, before and after the accident when I did see the light it was on the bricks though it, that is the brick and the said obstruction, was frequently without any light at all after dark. Marois's house is in St. John's Suburbs of this city.

GEORGE W. ELLISON, of the City of Quebec, in the District of Quebec, Daguerreotypist, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. On the sixth of November last I saw John W. Barrow, the Plaintiff in the cause; I saw him between seven and eight o'clock on that day at Mr. William Bickell's, in St. John's Street, the corner just inside St. John's Gate. He had a very severe cut on the head. Dr. Frémont was present at the time dressing the wound. The accident which caused the cut occurred in my presence, I was going out of St. John's Gate in this city about six o'clock on the said sixth of November, as I was first entering the Gate I heard a horse coming at a furious pace

and people crying out to clear the road, I had just time to step back behind the Gate so as to clear myself, when the horse came through, galloping at a furious pace, when he came through the gate he ran against a load of wood in a cart, which caused the waggon which the horse was drawing to be broken off from him, I did not see any one in the waggon then. The horse went on down the street. I then immediately passed through the Gate and discovered the moment I got into the gate that two persons had been thrown out of the vehicle and dangerously hurt. We then immediately got assistance, and had those persons taken into Mr. Bickell's the grocer. I was walking out to the westward towards the Suburbs, I was just inside the Gate and about to enter it, when I heard the noise of the horse galloping and the people crying out as I have mentioned above. I then stepped back and did not enter the gate until the horse passed through as above mentioned. I then went into the gate and when about a third through perceived two persons lying up against the side of the gate. Those were the persons above mentioned, whom I found to be the Plaintiff and his sister. As far as I could judge from the position in which the Plaintiff and his sister were, they must have been thrown out in the gate, and I attribute their not being killed to their being wrapped up in buffalo robes. In the month of October and the early part of November last, I was in the habit of driving out in my waggon out St. John's Street, without, in the City of Quebec. I know the house which was then in the course of construction for Mr. Marois, it is on the north side of St. John Street, without, aforesaid, in the second block outside St. John's Gate and two doors above Stokes the grocer's. The street opposite the said Marois's house was during the month of October and the early part of November last, very much encumbered with stones, bricks, and other building materials for the said house; so much so that I found difficulty several times about that time in passing another vehicle there; in fact, I had to stop till several times to allow another vehicle to pass, before I could get by. The street was not fenced off in any way for the building materials opposite the said Marois's house. About nine o'clock on the evening of the said sixth of November, the day of the accident to Mr. Barrow, I went out and measured the distance of the street obscupied by building materials, that is to say, the space between the building materials opposite Marois's said house and the parapet on the south side of St. John's street, without. I found there was fourteen feet six inches of clear road for horses and vehicles, the remainder being taken up with building materials. I measured the road with a tape line. There was a light hooked up on the gate next to the westward of Marois's building. There was no light upon the obstructions in the road, I took particular notice of it. The light over the gateway stood out a foot or so, in a horizontal direction, so far as I remember. St. John's Street, without, is a pretty wide street and if the street was not obstructed I think that five waggons could pass abreast between the parapets. I know Mr. Walker, a dry goods merchant, of this city. His christian name is John. He pointed me to measure the distance between the obstruction and the parapet on the south side of St. John's Street aforesaid, on the evening of the said sixth of November last, that is on the evening of the accident.

James Woodley, of the City of Quebec, in the District of Quebec, Shoemaker, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I know Mr. Marois's new building situate in St. John's street in this city, in St. John's Suburbs. The said St. John's Street is one of the principal streets of the city, and is the only direct outlet from the City to St. John's Suburbs, and is continually thronged with vehicles and passengers. I would look upon any obstruction in the road in that place as exceedingly dangerous, that is opposite Marois's house or anywhere thereabouts, inasmuch as the block in which Marois's building is situated is the second from St. John's Gate. For three years I lived two doors from the house where Marois's new building now stands. I saw the Plaintiff in this cause on the sixth of November last, immediately after the accident he had met with in consequence of having been thrown out of his vehicle, he was then at Mr. Bickell's grocery shop, close to St. John's Gate. Hearing that the cause of the accident was his horse's running away in consequence of the vehicle which he was driving coming in contact with the obstruction opposite Marois's, about a quarter or half an hour after, at the request of Mr. Adair a witness examined in this cause, I went out to take more particular notice of the obstruction or encumbrance opposite to Mr. Marois's said house. The obstruction consisted of brick, stone, and other building materials. There was no light upon the obstruction in the street nor even upon Marois's building at the time we measured the width of the street by pacing it on the night of the accident, but there was one on the adjoining house on the country side of it. I paced the street with Mr. Adair, but the number of paces across the street I do not remember. Mr. Adair took a note of it, I did not, all I remember is that the encumbrance, that is the building materials opposite Marois's said house occupied two-thirds of the street, besides that there was one stone that lay some three or four feet outside the rest of perhaps a foot and a half to two feet high or in depth. The stone was to the country side of the pile of brick and was considerably further out in the street. I was in the habit of going St. John's road nearly every day during the months of October and November during last year and for the last month previous to the accident the street appeared to be about as much encumbered there as upon the day of the accident, I perceived little or no difference. When I say that the stone was on the country side of the pile of bricks it was opposite about the centre of Marois's house, the pile of bricks being on this side of the said stone. Question.—Was the obstruction in the said street so great for a month previous to the accident that it must have come under the notice of the officers of the Corporation of this City? (Objected to, taken *de bene esse*.) Answer.—It might have been that but if the police had paid attention to their duty they must certainly have seen it.

Cross-Examined.—St. John's Street, without, is one of the broadest streets in this City. If there was no encumbrance in the street opposite Marois's house I think that four horses and waggons could pass abreast, that is between the two parapets. I paced the street myself but I do not now recollect the number of paces. I signed the memorandum that Mr. Adair made, and I am sure what he said was correct. We only paced the street, we did not make use of any instrument to ascertain the exact width. I think the large stone of which I have already spoken extended three or four feet beyond the pile of bricks. The house of which I have spoken as adjoining Marois's new building is only separated by a gable wall. The light of which I have spoken was immediately over the gateway of the said house.

Re-Examined.—The light, so far as I remember, did not extend into the street, it was a very poor light, an ordinary candle light. The night was a very dark one and cloudy. We went purposely to see if there was any light, and I am positive there was no other than the one I have mentioned. I saw no watchman there and I think there could have been none as we were there some time and no one having authority came to us or inquired what we were doing. From the examination I made with Mr. Adair on the night in question I do not think that two vehicles could have passed one another in the gap of the road between the said encumbrance and the parapet on the south side of the road, without danger, especially where the stone was, I do not think that two could have passed, and I am positive that a person in a vehicle could not have seen the stone at that time from the darkness of the night, and there being no light on the pile, in fact I could not see it myself until I kicked against it in going around to examine the pile and measure the street.

[illegible]

[illegible]

Cross-Examined.—On the day of the accident in question, the materials referred to [illegible] as I have [illegible].

John Walsh, of the City of Quebec, in the District of Quebec, [illegible], aged above twenty-one years, being duly sworn on the Holy Evangelists, doth depose and say: [illegible] ... of the City of Quebec [illegible] ... opposite a house then in course of construction for a person named Marois. [illegible] ... I measured the distance afterwards for my own satisfaction [illegible] ... I was in the habit of going out St. John's road two or three times a week, at this time and during a week or two previous the street opposite Marois's house was very much encumbered with building materials [illegible] ... I am positive. [illegible] ... mentioned. I did [illegible] south side of the obstruction.

Greenway Trenholm, of the City of Quebec, Grocer, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. I live in St. John Street, without, of this city, in the block immediately after the one in which Marois's house was in the course of construction last year, and had frequently to pass in the street during the time of the building of the said house, in the months of October and November last, the street opposite the said house was much encumbered with building materials for the said house. The masons were in the practice of cutting stone there for the said house. It was so encumbered during that time to the extent of at least one-half the street. I remember on one occasion, I think it was on the first or second of November last, at any rate during the week of the accident to the Plaintiff, I was driving down the street with my waggon, there was another horse meeting me and opposite Marois's from the encumbrance we were not able both to pass and I was necessitated, as his horse was first in the gap, to back mine out to enable the other horse to pass. To the best of my opinion if the street was not encumbered I think that four horses and waggons could pass abreast, that is alongside of one another. There was no portion of the street fenced off opposite Marois's for the stone for the masons. There was one stone in particular projecting further than the rest, and which was the stone which prevented my passing the other horse as above mentioned, and which necessitated my backing out as aforesaid. The stone was a good sized one, about a foot and a half high and perhaps three feet and a half long. When I stated that four horses could pass abreast I mean between the parapets.

Alexander Adair, of the City of Quebec, in the District of Quebec, Dry-goods Merchant, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. On the sixth day of November last, I heard that the Plaintiff had met with an accident by the overturning of his vehicle, and upon that I went up to his brother's lodgings, over his shop in St. John's Street, where I found him with his head bound up, and it appeared that there was considerable effusion of blood from his forehead oozing out of the handkerchief that bound it. After a short delay he requested me to go up and see the place where the accident occurred, which I did, taking Mr. James Woodley with me. It was then eight o'clock for the gun fired when we were examining the spot where the accident happened, in St. John's Street, without, in the City of Quebec, and opposite to a building then in course of erection for a gentleman named Marois. I then and there found the street opposite the said house encumbered by a large quantity of building materials to the extent of about four and a half of my paces, for I paced the street from one side to the other and [illegible] from one [illegible] to the other of the street to measure its width [illegible] of my paces, my [illegible] were all equal. [illegible] building materials [illegible]. There was one stone projecting out [illegible] the building materials [illegible] further than the half of the street and [illegible] I found the street to be [illegible] building materials, leaving four paces for the passing of vehicles. I did not measure the stone in question [illegible] long. The building material which [illegible] to see whether there was a light upon the building materials [illegible] the obstruction in question but I found none on it. I looked well [illegible] there was none on the said obstruction nor yet on the building. There was, however, a small lantern hanging from the building immediately joining the one in course of construction, with a lighted candle in it; it was suspended about a foot and a half or two feet from the building, probably to give light to foot passengers. There was no fence around the building materials in the street; no part of the street was fenced off containing the building materials within. The light in the lantern was a faint light and not nearly so brilliant as a gas [illegible]; it was about the height of a gas lamp from the street. I know from whom the Plaintiff purchased his horse; the horse was then about three years old, that is when he purchased him, that was about four years ago. When I said three years old I mean rising four. I am not in the horse line of business and cannot speak positively of his value but I know a good horse from a bad one, and I considered Mr. Barrow's a very good horse. Mr. Jiggins refused thirty-five pounds for the horse in my presence, when he was rising four years of age. Mr. Jiggins was not anxious to sell the horse unless he got a good price for him. I had no occasion in October or the early part of November last year to pass St. John's Street. Mr. Jiggins mentioned above resides in the Township of Leeds. Upon several occasions since the accident I saw Mr. Barrow and he appeared to be suffering.

Cross-Examined.—St. John's Street, without, is a broad street. I have no personal knowledge of the accident in question, not having been present, nor at what time of the day it happened. I remarked a lamp post a little above the upper portion of the building materials; it was on the opposite side of the street. I did not observe particularly that there was a lamp post at the corner. The gas was lit at the time when I went out to look at the spot where the building materials were. The gas did not throw a good light on the building materials but it threw a better light upon the upper portion [illegible] towards [illegible], but that place where the stone projected out further than the rest of the materials was the darkest place in the street.

John Boomer, of the City of Quebec, in the District of Quebec, [illegible] City Treasurer, aged above twenty-one years, being duly sworn upon the Holy Evangelists, doth depose and say: I do know the parties in this cause. I am not related, allied, or of kin to, nor in the service or domestic of either of them, or interested in the event of this suit. On Saturday evening, the sixth of November last, to the best of my recollection, I was going in to the Cathedral and when I got inside of John's Gate of this city I saw a crowd of people collected, I asked what was the matter, when some one in the crowd said Mr. Barrow's horse was killed and that he was very severely injured; I enquired of the crowd where he had been taken to, and they said to Mr. Bickell's, I went there and saw him, but before that I saw his horse upon a truck, with one of his legs broken. He was then quite dead. I am Major in the Militia Active Force. I have driven to the country with Mr. Barrow, on one occasion to Frampton and on another to Cranbourne. The larger portion of the roads to these places are very bad. I thought the horse upon these occasions an admirable horse, and the driver, Mr. John Barrow, an excellent driver and exceedingly careful, much more than I would have been myself. The Plaintiff is Adjutant of the foot companies of Militia Artillery active force, and as such under my command. From my position in the Force I know that all Adjutants are entitled to keep a horse and are exempt from paying taxes for the horse. On field days I was present when Mr. Barrow used his horse. He appeared to be well trained and stood fire remarkably well. A horse being trained in this manner makes him more valuable. I occasionally passed St. John's Street, without, opposite Marois during the months of October and November last. I thought it more encumbered than ordinary, I mean beyond what I considered to be the half of the street. Marois's house is the second house in the second block outside St. John's Gate of this city. I live in St. George's Street, St. John's Suburbs, and generally turn down, in going home, by the second street, between Stokes and Fullarton's corners. I was in the habit of going home at least twice a day. As it was none of my business I did not pay particular attention to the manner in which the street was encumbered. I went down with the Plaintiff from Mr. Bickell's to his brother's on the night of the accident and when we reached the brother's we took off his things and rubbed his shoulders and neck, to remove pains that he complained of in those localities. I think it was with arnica we rubbed him. Mr Barrow's head was bandaged and there was blood running down from under the bandage.